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IN THE

Supreme Court of the United States

CITY OF SHERRILL, NEW YORK,

Petitioner,

v.

ONEIDA INDIAN NATION OF NEW YORK, RAY HALBRITTER, KELLER GEORGE, CHUCK FOUGNIER, MARILYN JOHN, CLINT HILL, DALE ROOD, DICK LYNCH, KEN PHILLIPS, BEULAH GREEN, BRIAN PATTERSON, and IVA ROGERS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF *AMICUS CURIAE* STATE OF NEW YORK IN SUPPORT OF PETITIONER CITY OF SHERRILL

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INTEREST OF THE AMICUS CURIAE

This case presents the critical question whether the more than 250,000-acre Oneida Indian reservation in central New York State, which was created in a state treaty in 1788 and acknowledged by the United States in 1794, was later terminated when the Oneidas remaining on the reservation in 1838 agreed to remove from New York in the Treaty of Buffalo Creek. Treaty of January 15, 1838, 7 Stat. 550. The Second Circuit held that several parcels recently acquired by the Oneida Indian Nation of New York (the "Nation") within the 1788 boundaries are not subject to local real property taxation because the land today remains Indian country under 18 U.S.C. § 1151(a). *Oneida Indian Nation of New York v. City of Sherrill*, 337 F.3d 139 (2d Cir. 2003) ("*Sherrill*"). This conclusion imperils the tax and civil regulatory jurisdiction that the State has exercised over the region for more than 150 years. Under the court's decision, the Nation may remove any land within this vast region from the tax rolls of local governments simply by purchasing it, thereby threatening the local tax base and financial well-being of communities in the area. Because state regulatory authority over tribal land in Indian country is restricted, the decision also jeopardizes the orderly and uniform application of law by the State and local governments throughout the region.

Moreover, the court's decision is already affecting parts of the State beyond the borders of the Oneidas' historic lands. The decision is being relied upon by other tribes that are now litigating land claims against the State in support of the assertion that their mere purchase of land within their claim area renders the land exempt from state and local taxation, and land use and environmental regulation. *See Cayuga*

Indian Nation of New York v. Village of Union Springs, 2003 U.S. Dist. LEXIS 21578 (N.D.N.Y. Nov. 28, 2003); *Seneca-Cayuga Tribe of Oklahoma v. Town of Aurelius*, 03-CV-690 (N.D.N.Y.) (both actions regarding property located within the approximately 64,000-acre Cayuga land claim area in upstate New York). The State has a vital interest in continuing to assert its longstanding jurisdiction over these lands as well.

In this brief, amicus curiae State of New York concentrates on the Buffalo Creek Treaty because the State has an interest in assuring that the treaty is correctly interpreted.[1] In holding that Buffalo Creek did not terminate the Oneida reservation, the Second Circuit ignored the fact that Buffalo Creek was a removal treaty designed "to release the Eastern lands from Indian tenure and to remove the Indians into a country not then settled by whites." *New York Indians v. United States*, 30 Ct. Cl. 413, 450 (1895), *rev'd on other grounds*, 170 U.S. 1 (1898). Because the court downplayed the treaty's background, it erroneously concluded that Congress intended the reservation to continue even after the Oneidas agreed in Buffalo Creek to remove to a new reservation created for them by the United States in the Indian territory halfway across the continent.

HISTORICAL BACKGROUND OF THE BUFFALO CREEK TREATY

A brief description of the Treaty of Buffalo Creek is essential to understanding the issues in this case. The treaty itself is explicit about its background and purpose. Its

1. Our focus on Buffalo Creek in this brief is not in derogation of the other questions presented in the petition for certiorari.

preamble recounted over 20 years of federal efforts to remove the New York Indians, including the Oneidas, from New York. Preamble, 7 Stat. at 550-551. The treaty recited that its purpose was to carry out the "policy of the Government in removing the Indians from the east to the west of the Mississippi, within the Indian territory." Preamble, 7 Stat. at 551. Federal removal policy, articulated by the Indian Removal Act of 1830, 4 Stat. 411, was designed to "mak[e] a vast area available for white settlement while reducing the conflict of sovereign authority caused by the presence of independent Indian governments within state boundaries." Felix S. Cohen, *Handbook of Federal Indian Law*, p. 79 (1982 ed.). In furtherance of the federal removal policy, Buffalo Creek was intended "to release the Eastern lands from Indian tenure and to remove the Indians into a country not then settled by whites," *New York Indians*, 30 Ct. Cl. at 450, and thereby end the very types of jurisdictional conflicts at issue here.

Buffalo Creek's terms gave effect to the removal purposes of the treaty, expressly providing for the removal of the Oneidas from New York. In the treaty, the Oneidas and the other New York Indians ceded to the United States lands previously granted them in Wisconsin (except for a tract that became the present Oneida reservation in Wisconsin) and received a new 1,824,000-acre reservation in modern-day Kansas "as a permanent home for all the New York Indians, now residing in the State of New York, or in Wisconsin, or elsewhere in the United States, who have no permanent homes . . ." Arts. 1, 2, 7 Stat. at 551-552. The new reservation was to be the "future home" for, among others, the 620 "Oneidas . . . [then] residing in the State of

New York." Art. 2, Sch. A, 7 Stat. at 551-552, 556.[2] Buffalo Creek provided that the Oneidas could henceforth "establish their own form of government, appoint their own officers, and administer their own laws" on the Kansas lands designated as "their new homes." Art. 4, 7 Stat. at 552. The treaty's terms restricted the Oneida's exercise of these powers of tribal sovereignty and jurisdiction to "said country," *i.e.*, the part of the new reservation specifically delineated for occupation by the Oneidas. Arts. 4, 5, 7 Stat. at 552. Finally, the treaty provided for the disposition of the Oneidas' remaining lands in New York. The Oneidas "hereby agree[d] to remove to their new homes in the Indian territory, as soon as they can make satisfactory arrangements with the Governor of the State of New York for the purchase of their lands at Oneida." Art. 13, 7 Stat. at 554. Following Buffalo Creek, the Oneidas entered several treaties with the State providing for the sale of portions of their New York lands. *New York Indians v. United States*, 40 Ct. Cl. 448, 469-70 (1905).

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2. The court below mistakenly held that the New York Oneidas were not intended to share in the Kansas lands because they "had a permanent residence in New York State." *Sherrill*, 337 F.3d at 161 n.17. Buffalo Creek set apart an amount of land in Kansas more than sufficient to provide 320 acres to each of the New York Indians enumerated in the census set forth in Schedule A to the treaty, including the 620 New York Oneidas. *See* Sch. A, 7 Stat. at 556; *New York Indians v. United States*, 40 Ct. Cl. 448, 458 (1905). The treaty specifically provided that the Kansas lands were "intended as a future home" for the Oneidas residing in the State of New York. 7 Stat. at 551-552. Moreover, as discussed at Point I below, the fact that the Kansas lands were intended to be the new home of, among others, the New York Oneidas, was shown by the fact that they shared in the recovery in *New York Indians v. United States*, 170 U.S. 1 (1898).

SUMMARY OF ARGUMENT

Because the Second Circuit ignored Buffalo Creek's removal-era background, it misconstrued the treaty. The court held that the Oneidas' agreement to remove from New York to a new reservation created for them in what is now Kansas was conditional and did not terminate their New York reservation. This holding is at odds with this Court's holdings in *New York Indians v. United States*, 170 U.S. 1 (1898), that the Oneidas agreed in Buffalo Creek to remove from New York and in *United States v. Santa Fe Pacific R. Co.*, 314 U.S. 339 (1941), that a tribe that accepted a new reservation released and relinquished tribal rights over other lands. Here, the Oneidas' agreement in Buffalo Creek to remove from New York and their acceptance of the new reservation terminated their jurisdiction over lands in New York. This Court should grant the petition to resolve this conflict regarding the correct interpretation of this important federal removal treaty.

Additionally, the Court should grant the petition because the issue presented is of exceptional importance to New York State and its citizens. The decision below allows the Nation and, by extension, other Indian tribes with claims to New York lands, to exempt area lands from much State and local tax and civil regulatory authority simply by purchasing them. The potential for the disruption of the orderly administration of law in this area, comprising a large part of two central New York counties, is substantial. Moreover, this disruption is occurring now: In both the Oneida and the Cayuga land claim areas, the tribes are contesting the authority that the state and local governments have exercised over the area for generations. This Court should grant the petition to reaffirm the State's historic jurisdiction over these lands and avert regulatory chaos in the region.

REASONS FOR GRANTING THE PETITION

I. The Second Circuit's Treatment Of Buffalo Creek Conflicts With This Court's Interpretation Of The Treaty In *New York Indians v. United States*, 170 U.S. 1 (1898), And Ignores This Court's Decision In *United States v. Santa Fe Pacific R. Co.*, 314 U.S. 339 (1941), That A Tribe's Acceptance Of A New Reservation Releases And Relinquishes Tribal Claims To Other Lands.

A. This Court held in *New York Indians* that in Buffalo Creek the Oneidas agreed to remove from New York.

This Court's holding in *New York Indians* conflicts with the central premise of the decision below. The Second Circuit's misinterpretation of Buffalo Creek is grounded in its mistaken belief that the "central bargain" of the treaty was the Indians' exchange of their Wisconsin lands for new lands west of the Mississippi. *Sherrill*, 337 F.3d at 160; *see also id.* at 164 (the land exchange was the "rationale for the award" to the New York Oneidas and others in *New York Indians*). But in *New York Indians*, this Court held that the Indians' agreement to remove to the west, rather than the Wisconsin-Kansas land swap, was "[p]robably . . . the main inducement" for the United States to set aside new lands for them in the Indian territory. *New York Indians*, 170 U.S. at 15. Additionally, citing Article 13 of Buffalo Creek, this Court held that the Oneidas' agreement to remove "as soon as" they sold their remaining lands to the State was sufficient under the treaty to avoid a forfeiture of the new lands under a treaty stipulation that any of the tribes that did not "accept and agree to remove to" the new lands in five years or at such

other times prescribed by the President would forfeit the new lands. *Id.* at 26.

This Court held that, by virtue of agreeing to remove, the Oneidas obtained an interest in the new lands that the United States became obliged to pay for years later, after it sold the land to non-Indian settlers. *See id.* at 26, 36. The fact that the New York Oneidas shared in this award, *see New York Indians v. United States*, 40 Ct. Cl. 448, 467, 471-72 (1905), established that their removal agreement in Buffalo Creek was not, as the Second Circuit mistakenly asserted, simply an "agreement to agree" conditioned on subsequent land sales to New York State. *Sherrill*, 337 F.3d at 161.[3] In Article 13, the Oneidas agreed to remove "as soon as" they disposed of their lands, not "only if" they were able to sell them. This Court has recently recognized that an agreement to remove "as soon as" an expected imminent event occurs is a present agreement to remove. *See Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 189-90, n.4 (1999) (noting that the United States negotiated several "removal treaties" with Indian tribes in 1837 including one with the Saganaws, 7 Stat. 528, 530, in which the tribe agreed to remove from Michigan "as soon as a proper location can be obtained").

Consequently, in *New York Indians*, this Court held that the Oneidas' agreement to remove was complete upon their execution of the treaty. The prospect that the Oneidas might

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3. Indeed, elsewhere in its opinion, the Second Circuit recognized that the Oneidas had not simply "agreed to agree" to remove. *See Sherrill*, 337 F.3d at 165 n.22 (acknowledging, apparently in contradiction of its earlier statement, that *New York Indians* held that the Oneidas obtained nonforfeitable rights to the Kansas lands "merely by their agreement to remove").

not actually remove did not undo their agreement or vitiate their rights in the Kansas lands. According to this Court, the Oneidas' agreement to remove made them, together with the other New York tribes that agreed to remove, the owners of the Kansas lands. Thus, the Second Circuit's conclusion that the Oneidas did not agree to remove from New York in Buffalo Creek squarely conflicts with this Court's holding in *New York Indians* that they did.

Additionally, the Second Circuit's heavy reliance on a purported statement to the Oneidas by the United States treaty commissioner that Buffalo Creek did not require them to remove, *Sherrill*, 337 F.3d at 161-62, is at odds with *New York Indians*. There, this Court concluded that a treaty proviso adopted by the Senate requiring an explanation of its Buffalo Creek amendments to the New York tribes and each tribe's assent thereto and permitting the President to deduct from the new reservation 320 acres for each Indian who did not remove never became effective because there was no evidence that the President ever approved the proviso. 170 U.S. at 22-23. The alleged statement cited by the Second Circuit appears in the record below as a photocopy of a handwritten document attached as an exhibit to an attorney affidavit. Jt. App. 1312-1313. This alleged statement is not annexed to the treaty as reproduced in Statutes at Large and there is no evidence that it was ever approved by the Senate or the President. *See* 7 Stat. at 562-63 (no qualification of the Oneidas' agreement to remove); *cf.* Supp. Art., 7 Stat. at 561, 564 (explicitly providing that the United States would not compel the St. Regis Indians to remove). In any event, whether or not the United States intended to force individual Oneidas to leave New York, the Oneidas' agreement to remove terminated any tribal jurisdiction in the State.

B. The Second Circuit's decision conflicts with this Court's decision in *Santa Fe* that a Tribe's acceptance of a new reservation relinquishes tribal claims to other lands.

The Second Circuit's holding that Buffalo Creek did not terminate the Oneidas' New York reservation also conflicts with this Court's holding in *United States v. Santa Fe Pacific R. Co.*, 314 U.S. 339 (1941). In that case, the Walapai Indians requested that a new reservation be created for them because of the encroachment of settlers onto their lands. The President created the new reservation by executive order and the Walapais accepted it, although only a few actually moved there. Nevertheless, this Court held that the creation of the new reservation and the tribe's acceptance of it amounted to a relinquishment of any tribal claims to lands outside the new reservation. *Santa Fe*, 314 U.S. at 357-58.[4] More recently, four Justices of this Court, citing *New York Indians* and *Santa Fe*, observed with respect to an issue not resolved by the Court that whether the Oneidas abandoned their claim to lands in New York when they signed Buffalo Creek is a "serious question." *See County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 269 n.24 (1985) (Stevens, J. dissenting).

The decision below also conflicts with the holding of the Seventh Circuit in *Menominee Indian Tribe v. Thompson*, 161 F.3d 449, 458-59 (7th Cir. 1998), *cert. denied*, 526 U.S. 1066 (1999), that hunting and fishing rights reserved in lands

4. In *Santa Fe*, this Court found that creation of an earlier reservation never accepted by the Walapais did not extinguish their claim to their old lands. *Santa Fe*, 314 U.S. at 354-55. That holding does not control this case because the Oneidas agreed in Buffalo Creek to remove from New York to their new reservation and accepted the benefit of the new reservation.

that the tribe ceded to the United States in an 1831 treaty were terminated by an 1848 treaty in which the tribe agreed to cede to the United States its remaining Wisconsin lands and remove to Minnesota, although the hunting and fishing rights were not mentioned in the 1848 treaty and the tribe never left Wisconsin.[5]

Thus, this Court should grant the petition because the Second Circuit's conclusion that the Oneidas' acceptance of the new reservation and their agreement to remove to it did not terminate tribal sovereignty over any lands in New York conflicts with this Court's holding in *Santa Fe* and the Seventh Circuit's holding in *Menominee Indian Tribe*.

C. The Oneidas' agreement to remove and their acceptance of a new reservation resulted in the relinquishment of tribal jurisdiction over their New York lands.

This Court's decision in *New York Indians* establishes that the Oneidas accepted the new western reservation when they agreed in Buffalo Creek to remove to it. Although only a few Oneidas actually removed, the Oneidas received the benefit of their bargain: they were paid for the new reservation in *New York Indians*. *Santa Fe* establishes that the benefit came with a corresponding burden, which the Oneidas now seek to disavow: the Oneidas' agreement relinquished their tribal jurisdiction over any lands in

5. The decision below is also in tension with the Seventh Circuit's holding in *Sokaogon Chippewa Community v. Exxon Corp.*, 2 F.3d 219, 223-24 (7th Cir. 1993) (hunting and other occupancy rights retained by the tribe in land ceded to the United States in an 1842 treaty were extinguished in an 1854 treaty ceding their lands to the United States in exchange for a promise of reservations and annual payments), *cert. denied*, 510 U.S. 1196 (1994).

New York. *See Sokaogon Chippewa Community v. Exxon Corp.*, 2 F.3d 219, 225 (7th Cir. 1993) (tribe's acceptance of treaty benefits implies acceptance of treaty burden of surrender of right of occupancy), *cert. denied*, 510 U.S. 1196 (1994); *see also* Brief of Amicus Curiae United States at 30-33, *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226 (1985) (No. 83-1065) (although disavowing a "concluded view" on the relinquishment question, the United States noted that, because the Oneidas successfully sued to enforce their rights under Buffalo Creek, "a court might conclude that the Oneidas should not now be heard to contend that much of New York was not released from Indian tenure after all") (citation omitted). The Second Circuit was bound to follow *New York Indians* and *Santa Fe*.

Congress' intent to terminate the Oneidas' New York reservation is apparent from the terms of Buffalo Creek. The Oneidas' agreement to remove to a new home in the Indian territory and to establish a government and administer laws there, rather than on the New York lands from which they had just agreed to remove, superseded whatever rights the Oneidas may have had in the region under the 1794 Treaty of Canandaigua. Treaty of November 11, 1794, 7 Stat. 44. The continued existence of a more than quarter-million-acre "reservation" in central New York is fundamentally at odds with a treaty agreement to remove a thousand miles west and exercise sovereignty in a new home. Buffalo Creek provided for the disposition of the Oneidas' remaining New York lands in the expectation that there would no longer be an Oneida reservation in New York. Moreover, the removal policy's goal of avoiding conflicts of state and tribal sovereignty could be accomplished only if Oneida sovereignty over the area from which they were obligated to remove was terminated. Necessarily, by terminating tribal

jurisdiction, Buffalo Creek terminated the reservation. Accordingly, even though individual Oneidas remained in New York, the language and purpose of Buffalo Creek compel the conclusion that the Oneidas relinquished all of their tribal sovereignty over lands in New York when they accepted the new western reservation.

The Second Circuit, however, discounted the clear import of the treaty, instead relying heavily on the absence of explicit language of cession and payment in Buffalo Creek in support of its conclusion that the treaty did not terminate the Oneida reservation. *See Sherrill*, 337 at 159-61 ("[t]here is no specific cession language, and no fixed sum payment for opened land in New York").[6] The court's heavy reliance on the absence

6. The court's reliance on the absence of cession and payment language is at odds with this Court's holding that a reservation may be diminished despite the absence of any language of cession, or indeed any agreement by the tribe for the cession of its lands. *See Hagen v. Utah*, 510 U.S. 399, 411-14 (1994) (finding disestablishment where reservation land was "restored to the public domain" by statute, although the tribe refused to enter a treaty for cession of its land); *see also Solem v. Bartlett*, 465 U.S. 463, 471 (1984) ("explicit language of cession and unconditional compensation are not prerequisites for a finding of diminishment"); *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 588 n.4 (1977) (express language of termination is not required). Moreover, the court's heavy reliance on what it mistakenly viewed as the absence of "substantial and compelling evidence" in the treaty's text of congressional intent to disestablish the reservation, *Sherrill*, 337 F.3d at 161 (internal quotation omitted), conflicts with this Court's holding that such intent also may be discerned from the surrounding circumstances and legislative history. *See Mattz v. Arnett*, 412 U.S. 481, 505 (1973). Here, the surrounding circumstances and legislative history of the Buffalo Creek treaty, as well as its provisions, establish that the Oneidas' New York reservation was terminated.

of cession and payment language in Buffalo Creek was especially misplaced because the underlying fee to the Oneida lands was in the State, which was not a party to Buffalo Creek, rather than in the United States. *See Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 670 (1974) (original 13 states held the fee title or preemptive right to Indian lands within their boundaries). Instead of ceding their New York lands to the United States, which had no right to them, the Oneidas agreed in Article 13 to remove to the new reservation "as soon as" they sold their remaining New York lands to the State.

The Second Circuit also downplayed the facts that for well over a century the population of the area has been predominantly non-Indian and that the state and its localities have exercised jurisdiction over virtually the entire area for over 150 years.[7] The court dismissed this evidence, finding that the largest influx of non-Indians in the area occurred prior to Buffalo Creek as a result of prior sales of Oneida lands to the State or private parties. *Sherrill*, 337 F.3d at 163-64. Even if, as the court found, the influx of non-Indian settlers was not linked to the treaty, the Congressional directive that the Oneidas were to sell their remaining lands and remove may well have reflected Congress's recognition

7. A finding that the Oneida reservation has been terminated is not precluded by the fact that a 32-acre parcel in the area is recognized as Oneida land today. *See, e.g., United States v. Boylan*, 265 F. 165 (2d Cir. 1920), *error dismissed*, 257 U.S. 614 (1921). Indian country may include non-reservation areas. *See* 18 U.S.C. § 1151(b) (dependent Indian communities); 1151(c) (Indian allotments); *DeCoteau v. Dist. Co. Court for the Tenth Judicial Dist.*, 420 U.S. 425, 446-47 (1975) (statute terminated the reservation despite the existence within the former reservation area of Indian allotments that remained Indian country under 18 U.S.C. § 1151[c]).

of the *de facto* termination that had already largely occurred.[8] Moreover, the Second Circuit's observation that the influx of non-Indian settlers is the "least compelling" consideration in the allotment context has no force in the context of a removal treaty such as Buffalo Creek. *Sherrill*, 337 F.3d at 164. In contrast to the allotment cases, where the Indians were expected to remain on their allotted lands in the vicinity of lands that were opened to settlement by others, the premise of Buffalo Creek was that the Oneidas were to leave New York entirely and move far away to a new reservation. The fact that the area has been for many years populated predominantly by non-Indians bears out this expectation.

8. The Indian Claims Commission ("ICC") found that the Oneidas sold the bulk of the reservation to New York State with the knowledge of the United States in a series of negotiated transactions beginning in 1795. *Oneida Nation of New York v. United States*, 43 Ind. Cl. Comm. 373, 375 (1978). The ICC also found that Article 13 of Buffalo Creek constituted a federal authorization for the Oneidas to convey their remaining lands to the State. *Id.* at 385. Additionally, the ICC found that in purchasing Oneida land, New York had been doing "what would otherwise have been the Government's job, *i.e.*, buying lands from the New York Indians in order to persuade them to move west . . . In New York State, the state was carrying out [the Federal Government's removal] policy. . . ." *Id.* at 405.

Although two district court decisions have held that Buffalo Creek did not retroactively ratify prior land purchases by the State so as to extinguish any causes of action for violation of the Indian Trade and Intercourse Act, 25 U.S.C. § 177, these cases did not address the issue of whether Buffalo Creek prospectively terminated reservation status. *See Cayuga Indian Nation v. Cuomo*, 730 F. Supp. 485, 492-93 (N.D.N.Y. 1990), *appeal pending* (2d Cir.); *Oneida Indian Nation v. County of Oneida*, 434 F. Supp. 527, 539 (N.D.N.Y. 1977), *affirmed and remanded*, 719 F.2d 525 (2d Cir. 1983), *affirmed in part and reversed in part*, 470 U.S. 226 (1985).

In summary, the decision below conflicts with the decisions in both *New York Indians* and *Santa Fe* regarding the effect of the Oneidas' agreement to remove from their New York lands. This Court should grant the petition to resolve this conflict.

II. The Question Whether Buffalo Creek Terminated The Oneida Reservation Is Of Exceptional Importance To New York State.

The question whether or not the more than 250,000-acre Oneida "reservation" was terminated over a century and a half ago is of great importance to the State, its localities, and the predominantly non-Indian population of the area. The Second Circuit's decision has created great confusion regarding the State's tax and regulatory authority over this vast area, comprising a large part of two New York counties. The decision below authorizes the creation of scattered tax-exempt tribal enclaves of restricted state jurisdiction anywhere within this large area by unilateral tribal action. The resulting potential for disruption of the application of state law in the area is significant. Finally, the decision below disregarded the importance of the reasonable expectations of those who have lived in the area for generations. The court ignored the practical consequences to the state and local governments, as well as the residents of the area, if a non-Indian area that has long been governed by the State is returned to Indian country status. This Court should grant the petition to assure that its precedents regarding this important issue are followed and that a reservation that Congress terminated long ago is not resurrected over 150 years after the land has passed from tribal jurisdiction.

CONCLUSION

For the foregoing reasons, amicus curiae State of New York respectfully urges this Court to grant the Petition for a Writ of Certiorari.

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